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DILLON & YUDELL LLP
8911 NORTH CAPITAL OF TEXAS HIGHWAY
SUITE 2110
AUSTIN, TX 78759

EXAMINER

WHIPPLE, BRIAN P

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DON RUTLEDGE DAY, ROBERT J. KAMPER and
LARRY DON SWOFFORD

Appeal 2009-006445
Application 10/631,058
Technology Center 2400

Decided: June 7, 2010

Before ROBERT E. NAPPI, JOHN C. MARTIN, and JOESPH F.
RUGGIERO, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 6(b) of the rejection of claims 1 through 21.

We affirm.

INVENTION

The invention is directed to a messaging system where a plurality of characters forming a portion of a message will be sent once it is determined that a preset number of characters are entered in the message. See Paragraphs 0008 and 0009 of Appellants' Specification. Claim 1 is reproduced below:

1. A method in a data processing system for managing a messaging session, said method comprising the steps of:
 - a data processing system receiving a plurality of characters from a message sender within the messaging session, wherein the plurality of characters forms a portion of a message within the messaging session;
 - the data processing system determining that the number of characters of the received plurality of characters is at least equal to a preset number of characters; and
 - in response to said determining, the data processing system automatically transmitting the plurality of characters to a message recipient within the messaging session without receipt of a send command from the message sender signifying completion of composition of the message.

REFERENCES

The Examiner relies on the following prior art in rejecting the claims:

Enete	US 2003/0208543 A1	Nov. 6, 2003
Malik	US 2005/0044144 A1	Feb. 24, 2005
Horvitz	US 2003/0046421 A1	Mar. 6, 2003

QuikTxT, FAQs/How-To, 10/06/2002, Cellcom

REJECTIONS AT ISSUE

The Examiner has rejected claims 1, 2, 4 through 6, 8, 9, 11 through 13, 15, 16, and 18 through 20 under 35 U.S.C. § 103(a) as being unpatentable over QuikTxT in view of Enete. The Examiner's rejection is on pages 3 through 7 of the Answer.¹

The Examiner has rejected claims 3, 10, and 17 under 35 U.S.C. § 103(a) as being unpatentable over QuikTxT in view of Enete and Malik. The Examiner's rejection is on page 8 of the Answer.

The Examiner has rejected claims 7, 14, and 21 under 35 U.S.C. § 103(a) as being unpatentable over QuikTxT in view of Enete and Horvitz. The Examiner's rejection is on pages 8 and 9 of the Answer.

ISSUES

¹ Throughout this decision we refer to the Examiner's Answer dated March 26, 2008.

Appellants argue on pages 6 through 8 of the Appeal Brief² that the Examiner's rejection of claims 1, 2, 4 through 6, 8, 9, 11 through 13, 15, 16, and 18 through 20 under 35 U.S.C. § 103(a) is in error. Appellants argue that modifying QuikTxT with Enete would change the principle of operation of QuikTxT, as without the receipt of a send command QuikTxT is unable to split a message into multiple messages. Answer 6.

Thus, Appellants' contentions with respect to claims 1, 2, 4 through 6, 8, 9, 11 through 13, 15, 16, and 18 through 20 present us with the issue: did the Examiner err in combining the teachings of QuikTxT and Enete?

With respect to claims 3, 10, and 17 Appellants argue that the combination of QuikTxT, Enete and Malik does not teach that "transmitting an indication that the transmitted plurality of characters forms only a portion of the message" as recited in claim 2. Answer 8 and 9.

Thus, Appellants' contentions with respect to claims 3, 10, and 17 present us with the issue: did the Examiner err in finding that combined teachings of QuikTxT, Enete and Malik teach transmitting an indication as claimed?

PRINCIPLES OF LAW

On the issue of obviousness, the Supreme Court has stated that "the obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation." *KSR Int'l Co. v. Teleflex Inc.*,

² Throughout this decision we refer to the Appeal Brief dated October 26,
Footnote continued on next page.

550 U.S. 398, 419 (2007). Further, the Court stated “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 416

FINDINGS OF FACT

1. QuikTxT teaches a mobile messaging system which allows messages to be sent and received by a cell phone. QuikTxT, para. 1, “What is QuikTxT?”
2. QuikTxT will split any message over 160 characters into multiple messages. QuikTxT, paras. 9 and 14, “Message Length.”
3. When the message is split the individual parts are identified by part e.g. “part 1 of 3” ... etc. QuikTxT, paras. 9 and 14, “Message Length.”
4. Enete teaches a system for transferring electronic data. Abstract.
5. In one embodiment of Enete, a user can send a video message to another user. When a preset length of video is recorded it is automatically sent and the recording of another message is begun without user intervention, i.e. one video recording session is broken up into sections and each section is sent after it is recorded. Enete para. 0077.

ANALYSIS

Rejection of claims 1, 2, 4 through 6, 8, 9, 11 through 13, 15, 16, and 18 through 20.

First issue.

Appellants' arguments have not persuaded us that Examiner erred in combining the teachings of QuikTxT and Enete. The Examiner has found that QuikTxT teaches a messaging system where messages are split into parts and sent as a plurality of parts. Answer 4. Further, the Examiner finds that QuikTxT does not teach that the parts of the message are sent without receipt of a send command. The Examiner finds that Enete teaches a system where messages are automatically sent without receipt of a send command. Answer 4. We concur with the Examiner's findings as they are supported by ample evidence. FF 1-5. In response to Appellants' arguments that combining the references would change the principle of operation of QuikTxT, the Examiner states:

The principle [of] operation of QuikTxT is communicating a text message from one user to another (page 1, paragraph 1). The transmission of portions of said messages with or without reliance upon a send command is not the primary concern of QuikTxT.
Answer 10.

We concur with the Examiner. QuikTxT's concern with sending messages and modifying the system such that messages are automatically sent does not change this operation, rather it appears to enhance the principle of operation of QuikTxT as explained by the Examiner on page 14 of the Brief. Further, we do not see how such a modification would prevent the system from splitting large messages as asserted by Appellants on page 7 of the Brief.

We note that Appellants have also argued that modifying Enete to rely upon a send command would change the principal operation of Enete. Brief 7. However, the Examiner's rejection has not proposed such a modification. See Answer 12

Accordingly, Appellants' arguments have not persuaded us of error in the Examiner's rejection of representative claim 1 or claims 2, 4 through 6, 8, 9, 11 through 13, 15, 16, and 18 through 20 which Appellants have grouped with claim 1.

Rejection of dependent claims 3, 10, and 17

Appellants' arguments have not persuaded us that Examiner erred in finding that the combined teachings of QuikTxT, Enete and Malik teach transmitting an indication as claimed. Representative claim 3 is dependent upon claim 2. Claim 2 recites transmitting an indication of that the transmitted plurality of characters is a portion of the message. Claim 3 further recites that the indication is "a predefined character appended to the plurality of characters." Appellants' Specification identifies that the predefined character can be: an ellipsis (a series of three periods); a character specified by the user; a graphic image; or a separate executable file. Para. 0034 and 0035. Thus, we construe the term "a predefined character" broadly and not to be limited to appending only one text character.

The Examiner has found that QuikTxT teaches including in the transmission an indication labeling the parts of the message. Answer 5 and 16. This finding is supported by ample evidence. Fact 3. While this

teaching alone appears to meet the claim 3 limitation as predetermined characters are added to the message, the Examiner further states that appending a character to form an indication is well known. Answer 16. The Examiner cites to the teachings of Malik to demonstrate that adding a character to provide an indication is known. While we concur with Appellants that Malik's indication is for a different purpose, we nonetheless consider the claim 3 limitation to be obvious over the combination of QuikTxT, Enete and Malik as Examiner's reliance on the teaching of Malik (adding a character) is merely cumulative to what is taught by QuikTxT. Accordingly, Appellants have not persuaded us that the Examiner erred in finding that the combination of the references teaches transmitting an indication as claimed.

We are not persuaded by Appellants' further argument, on page 9 of the Brief, that the rejection of claims 3, 10, and 17 is in error for the reasons discussed with respect to claim 1. As discussed *supra* Appellants have not persuaded us of error in the rejection of claim 1.

For the forgoing reasons Appellants have not persuaded us of error in the Examiner's rejection of claims 3, 10, and 17.

Rejection of claims 7, 14, and 21.

On pages 9 and 10 of the Brief Appellants argue that the rejection of claims 7, 14, and 21 is in error for the reasons discussed with respect to claim 1. As discussed *supra*, Appellants have not persuaded us of error in the rejection of claim 1. Accordingly, Appellants have not persuaded us of error in the Examiner's rejection of claims 7, 14, and 21.

CONCLUSION

Appellants have not persuaded us of error in the Examiner's rejection of claims 1 through 21.

ORDER

The decision of the Examiner to reject claims 1 through 21 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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DILLON & YUDELL LLP
8911 NORTH CAPITAL OF TEXAS HIGHWAY
SUITE 2110
AUSTIN, TX 78759